

**PART 91, SOIL EROSION AND SEDIMENTATION CONTROL (SESC)
of the
NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (NREPA)**

(Prior to and After the 2000 PA 504 Amendments)

Section	Part 91 of the NREPA (prior to 2000 PA 504)	Part 91 of the NREPA (as amended by 2000 PA 504)
9101/9102 Definitions	Several terms are defined.	<p><i>Deleted Definitions</i> for Land Use, Local Agency, Local Enforcing Agency, and Public Agency.</p> <p><i>Added Definitions</i> for Conservation District, Consultant, County Program, Department, Local Ordinance, Municipal Enforcing Agency, Municipality, Violation of this Part, and Waters of the State.</p> <p>Notes:</p> <p>(1) The definition for "waters of the state" includes wetlands, but the requirement for a soil erosion and sedimentation control permit remains the same; permits are required for an earth change which disturbs one or more acres or which is within 500 feet of a lake or stream (See Rule 323.1704).</p> <p>(2) "Local Unit of Government" is not defined in Part 91, but is defined in Part 3, Definitions, of the NREPA. Local unit of government means a municipality or county.</p>
9103 Statewide SESC Program	The Michigan Department of Agriculture (MDA) shall develop a statewide SESC Program.	Section is deleted.

9104 Rules; Educational Materials	(1) The DEQ, with assistance of the MDA, shall promulgate rules for a unified SESC Program.	(1) Same. (2) The <i>DEQ shall make educational materials</i> available to the Part 91 Agencies to distribute to the applicants.
9105 County Administration	(1) County is responsible for administering and enforcing the rules throughout the county except for... (2) The county board of commissioners, by resolution, shall designate a county enforcing agency (CEA) for administering and enforcing Part 91. (3) Two or more counties may enter into an interlocal agreement for joint enforcement and administration.	(1) Minor word changes. (2) Minor word changes. (3) In lieu of a resolution, the county board may adopt a <i>SESC ordinance</i> ; the ordinance may be <i>more restrictive</i> than this part and the rules. The CEA <i>shall notify</i> the applicant if the ordinance is <i>more restrictive</i> than Part 91 and the rules. The ordinance shall <i>incorporate by reference</i> the rules promulgated under Part 91. (4) A copy of the resolution or ordinance shall be <i>forwarded to the DEQ for review and approval</i> . The DEQ shall forward a copy of the ordinance or resolution to the local conservation district for review and comment. (5) Same as "old" subsection (3) regarding inter-local agreements. (6) The DEQ shall review each county's SESC program within 3 years of the effective date of this amendment (January 11, 2001) and then every 5 years thereafter. An approval is valid for 5 years. <i>Review criteria</i> (refer to statute for specifics) are listed in this subsection, including the requirement that all individuals with decision-making authority have current certificates of training.

<p>9105 (cont.) County Administration</p>		<p>(7) The DEQ shall notify the county whether it will approve or disapprove the county program. The county may request an <i>informal meeting within 30 days</i> of receipt of the DEQ's approval/disapproval letter.</p> <p>(8) If the DEQ does not approve the county program, the DEQ shall enter an order, stipulation, or consent agreement <i>placing the county on probation</i>. The DEQ shall consult with the county during the <i>6-month probation period</i>.</p> <p>(9) Within <i>6 months</i> after being placed on probation, the county may notify the DEQ that it intends to <i>hire a consultant</i> within 60 days that is acceptable to the DEQ. The DEQ shall conduct a review of the county's program within 1 year after the county hires a consultant.</p> <p>(10) The <i>DEQ shall hire a consultant</i> to administer the county's program if the county: (a) does not notify the DEQ of its intent to hire a consultant; (b) does not hire a consultant that is acceptable to the DEQ; or (c) remains unapproved after the follow-up review in subsection (9)</p> <p>(11) Upon hiring a consultant, the <i>DEQ may establish a schedule of fees</i> for inspections, plan review, and permit issuance to pay the cost of the consultant or the <i>DEQ may bill the county for the cost of the contract</i> with the consultant, including the DEQ's cost (not to exceed 10 percent of the contract cost) for administering the contract.</p>
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9105 (cont.) County Administration		(12) At any time that the county is on probation, it may request the DEQ to review its program.
9106 Local/Municipal Administration	<p>(1) A city, village, or charter township by ordinance may administer and enforce Part 91 except for projects undertaken by authorized public agencies (APAs); administering agencies are referred to as Local Enforcing Agencies (LEAs); the ordinance may be more restrictive than Part 91 and the rules.</p> <p>(2) Ordinances or ordinance amendments shall be submitted to the DEQ for review and approval; the DEQ must forward a copy of the ordinance or amendments to the local conservation district for review and comment; the DEQ shall approve or disapprove the ordinance or amendments within 90 days.</p>	<p>(1) In addition to cities, villages, and charter townships, <i>general law townships in counties with a population over 200,000</i> may also administer and enforce Part 91; administering agencies are referred to as Municipal Enforcing Agencies (MEAs). The MEA <i>shall notify</i> the applicant if ordinance is <i>more restrictive</i> than Part 91 and the rules.</p> <p>(2) Minor word changes.</p> <p>(3) No later than 3 years after the effective date of this amendment (January 11, 2001), <i>a municipality shall not administer and enforce Part 91 unless the DEQ has approved the municipality. Approvals are valid for 5 years. The DEQ shall review municipalities every 5 years. Review criteria</i> (refer to statute for specifics) for designating or re-designating MEAs are listed in this subsection, including the requirement that all individuals with decision-making authority have current certificates of training.</p> <p>(4) If the DEQ does not approve a municipality, the DEQ shall enter an order, stipulation, or consent agreement denying or revoking the municipality's authority to administer and enforce Part 91. Upon entry of the order, the county program becomes operative.</p> <p>(5) A municipality that elects to rescind its ordinance shall notify the DEQ; the county program becomes operative.</p>

9106 (cont.) Local/Municipal Administration		(6) A municipality that rescinds its ordinance or is not approved by the DEQ <i>shall retain jurisdiction over projects under permit at the time</i> ; the county may agree to assume jurisdiction over previously permitted projects.
9107 Notice of Violation	The CEA or LEA shall notify the DEQ of all violations of Part 91, including violations of APAs.	The <i>local unit of government</i> (county or municipality) shall notify the appropriate CEA and MEA and the DEQ of all violations.
9108 Surety Bonds	The CEA or LEA may require some type of surety prior to issuing a permit.	Minor word changes.
9109 Conservation Districts and Agreements	<p>(1) Part 91 agencies may enter into agreements with soil conservation districts for assistance.</p> <p>(2) A person engaged in agricultural practices may enter into an agreement with the appropriate soil conservation district instead of obtaining a permit from the CEA or LEA.</p>	<p>(1) Minor word changes.</p> <p>(2) Person entering into an agreement with the conservation district must develop a <i>project specific SESC plan</i> and is subject to the remedies provided for in Part 91 for violations.</p>
9110 Authorized Public Agencies	<p>(1) A state, county, or local agency may apply to the DEQ for designation as an APA by submitting to the DEQ the SESC procedures that will be utilized on projects. The DEQ must forward the procedures to the appropriate conservation district (or MDA for state agencies) for review and comment. The conservation districts and MDA have 60 days to comment.</p> <p>(2) If the DEQ finds that the SESC procedures are adequate, the DEQ <u>may</u> designate the agency as an APA.</p> <p>(3) After designation, the APA must undertake all activities pursuant to the approved procedures.</p>	<p>(1) Minor word changes.</p> <p>(2) If the DEQ determines that the agency's SESC procedures meet the requirements of Part 91, the DEQ <i>shall designate</i> the agency as an APA.</p> <p>(3) Minor word changes.</p> <p>(4) No later than 3 years after the effective date of this amendment (January 11, 2001), an APA <i>shall not administer and enforce Part 91 unless the DEQ has approved it</i>. Approvals are <i>valid for 5 years</i>. The DEQ shall review APAs every 5 years. <i>Review criteria</i> (refer to statute for specifics) for designating and re-designating APAs are listed in this subsection, including the requirement that all individuals with decision-making authority have current certificates of training.</p>

9110 (cont.) Authorized Public Agencies		(4) If the DEQ does not approve an APA, the DEQ shall enter an order, stipulation, or consent agreement denying or revoking the designation as an APA.
9111 Plats	Preliminary plats and SESC.	Section is deleted.
9112 Violations; Notices; Hearings	<p>(1) Person shall not maintain or undertake an earth change except in accordance with Part 91. A person who violates is guilty of a misdemeanor.</p> <p>(2) Procedure that the DEQ must follow when a violation occurs</p>	<p>(1) <i>Misdemeanor penalty is deleted.</i> The CEA or MEA shall approve or deny an application for a permit within 30 days after the filing of a complete application. (Language transferred from Rule 323.1707).</p> <p>(2) Minor word changes and expansion of the process to include denying or not approving agency programs.</p>
9113 Injunctions; Inspections	<p>(1) A CEA or LEA may go to court to seek and injunction.</p> <p>(2) The DEQ or agency personnel may enter upon private property to inspect for possible violations.</p>	<p>(1) Minor word changes.</p> <p>(2) Minor word changes.</p>
9114 Rules	Additional rules.	Same.
9115 Exemptions	(1) This part does not apply to a person engaged in the industry generally referred to as logging or mining, or the plowing and tilling for the purpose of crop production.	<p>(1) Subject to subsection (2), a person engaged in the logging industry, the mining industry, or the plowing and tilling of land for the purpose of crop production is not required to obtain a permit. However, <i>all earth changes associated with the above activities shall conform to the same standards as if they required a permit.</i> Exemptions in this subsection do not include access roads to and from the logging and mining sites and <i>ancillary activities</i> associated with logging and mining.</p>

9115 (cont.) Exemptions		<p>(2) This part does not apply to a <i>metallic mineral mining</i> activity that is regulated under a mining and reclamation plan that contains SESC provisions under Part 631, Reclamation of Mining Lands, of the NREPA.</p> <p>(3) A person is not required to obtain a permit from the CEA or MEA for earth changes associated with well locations, surface facilities, flowlines, or access roads related to <i>oil and gas exploration and development</i>, if the application for a permit issued under Part 615, Supervisor of Wells, of the NREPA, contains a SESC plan. (Language transferred from Rule 323.1705). <i>All earth changes shall conform to the same standards as required for a permit under this part.</i></p> <p>(4) Mining does not include the removal of <i>clay, gravel, sand, peat, or topsoil</i>.</p>
9116 Reduction of Soil Erosion or Sedimentation by Owner	A person who owns land on which an earth change has been made that may result in or contribute to soil erosion or sedimentation of the waters of the state shall implement and maintain SESC measures that will effectively reduce soil erosion or sedimentation.	Same.
9117 Notice of Determination	If a CEA or LEA determines that soil erosion and sedimentation of the waters of the state has occurred, or will reasonably occur, it may seek to enforce this part by notifying the person by mail. The notice shall contain a description of specific SESC measures that, if implemented, would bring the site into compliance.	If a CEA or MEA determines that soil erosion and sedimentation of <i>adjacent properties</i> or the waters of the state has occurred, or will reasonably occur, it may seek to enforce this part by notifying the person by mail. The notice shall contain a description of the <i>violation and what must be done to remedy the violation and shall specify a time to comply with this part.</i>
9118 Compliance Time	A person shall implement and maintain SESC measures within 10 days after the notice of violation is given in Part 9117.	A person shall implement and maintain SESC measures with <i>5 days</i> after the notice of violation is given in Part 9117.

9119 Entry Upon Land; Implement SESC Measures	No sooner than 10 days after giving notice in Section 9117, the CEA or LEA may enter the property and construct, implement, and maintain SESC measures without expending more than \$500. If more than \$500 will be expended, then the work shall not begin until at least 20 days after the notice has been mailed.	No sooner than 5 <i>days</i> after giving notice in Section 9117, the CEA or MEA may enter the property and construct, implement, and maintain SESC measures without expending more than \$10,000. If more than \$10,000 will be expended, then work shall not begin until 10 <i>days</i> after the notice has been mailed.
9120 Reimbursement of Expenses	<p>(1) All expenses incurred by the CEA or LEA under section 9119 shall be reimbursed by the person who owns the land.</p> <p>(2) The CEA or LEA shall have a lien for expenses incurred under section 9119.</p>	<p>(1) Minor word changes.</p> <p>(2) Minor word changes.</p>
9121 Non-Compliance; Civil Fines	<p>(1) Person who is not in compliance with this part is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$500.</p>	<p>(1) A person who violates this part is subject to a <i>municipal or state civil infraction</i> and may be ordered to pay a <i>civil fine of not more than \$2500</i>.</p> <p>(2) A person who <i>knowingly violates</i> this part or knowingly makes a false statement in the application is responsible for the payment of a <i>civil fine of not more than \$10,000 for each day of violation</i>.</p> <p>(3) A person who <i>knowingly violates this part after receiving a notice</i> of determination under Section 9112 or 9117 is responsible for the payment of a <i>civil fine of not less than \$2500 or more than \$25,000 for each day of violation</i>.</p>

9121 (cont.) Non-Compliance; Civil Fines		<p>(4) <i>Civil fines collected</i> under subsections (2) and (3) shall be <i>deposited</i> in a) the state general fund if the state filed the action; b) the county or municipality if the county or municipality filed the action: or c) divided proportionately to each agency's involvement.</p> <p>(5) Default in the payment of a civil fine or costs ordered under this section may be remedied by any means authorized under the revised judicature act (1961 PA 236, as amended).</p> <p>(6) In addition to fines, a person who violates this part is <i>liable</i> to the state for <i>damages to the natural resources</i> and the court may order the person to <i>restore the area(s)</i> affected by the violation.</p> <p>(7) This section <i>applies to an APA</i> but not to a CEA and MEA with respect to its administration and enforcement of this part.</p>
9122 Severability	If any provision of this part is declared invalid, the invalid provision does not affect the remaining provisions.	Same.
9123 Training	Each individual who is responsible for administering this part shall complete the training within 2 years after the date they begin administering this part.	<p>(1) Beginning 3 years after the effective date of this amendment (January 11, 2001), <i>each individual</i> responsible for administering this part who has <i>decision-making authority for SESC plan development or review, inspections, permit issuance</i>, or enforcement shall be trained. The DEQ shall issue a certificate of training if the individual completes the SESC training sponsored by the DEQ and passes an examination.</p>

9123 (cont.) Training		<p>(2) Certificate of <i>training</i> is good for 5 years.</p> <p>(3) The DEQ may <i>charge a fee</i> for administering the training program and the examination. All fees shall be deposited into the SESC Training Fund.</p>
9123A Training Fund		<p>(1) The SESC Training Fund is created within the state treasury</p> <p>(2) The state treasury may receive funds, direct the investment of the SESC Training Fund, and credit the interest and earnings of the fund investments.</p> <p>(3) Money in the SESC Training Fund shall remain in the fund at the close of the fiscal year.</p> <p>(4) The DEQ shall expend money from the fund only to administer the SESC training program and examination.</p>